



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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OFFICE OF  
WATER AND  
WATERSHEDS

SEP 11 2013

Ms. Nancy Stellmach  
Oregon Department of Environmental Quality NWR  
2020 SW 4<sup>th</sup>, #400  
Portland, OR 97201-4987

Re: U.S. Environmental Protection Agency Comments  
Proposed Modification National Pollutant Discharge Elimination System Permit (NPDES)  
Wilsonville Water Quality Permit, NPDES Permit No. 97952 (EPA Ref.# OR-002276-4)

Dear Ms. Stellmach:

The U.S. Environmental Protection Agency has selected to review the above-referenced permit modification consistent with the Performance Partnership Agreement (PPA) and the EPA's obligation to oversee implementation of the NPDES program by delegated states. The proposed modification of the NPDES permit for the City of Wilsonville (City) is to allow the City to comply with its thermal wasteload allocation through water quality trading.

The EPA's comments reflect results of the review of the permit modification and permit evaluation (a.k.a. fact sheet) and the telephone conference call between staff at the EPA and Oregon Department of Environmental Quality (DEQ) on September 5, 2013.

In general, the EPA supports the concept of temperature trading as an option for the City to meet its thermal load effluent limit. However, the review found that the lack of detail in the permit documents raised questions regarding the City's trading program. The EPA would like to review the proposed final permit and Response to Comments document that addresses these comments prior to issuance of the final permit modification.

**General Comments on Permit Documents**

The City's Credit Trading Program

It is unclear in the permit documents what constitutes the City's Credit Trading Program and its current status. That status was clarified by DEQ during the September 5<sup>th</sup> telephone conference call. It is now the EPA's understanding that the City's Credit Trading Program is in draft form and is attached to the Fact Sheet, Attachment A, entitled, *Wilsonville Restoration Approach for Temperature Control* (no date). The public notice for the permit modification is intended to serve also as public notice of the City's draft Credit Trading Program, which will be revised based on comments received. The DEQ will approve the City's Credit Trading Program prior to finalizing the modified Permit.

The EPA requests that the Final Permit and Response to Comments clarify the status and approval of the City's Credit Trading Program. The Permit must refer to the Credit Trading Program by title, date of document, and approval date.

#### Projects Completed Prior to the Approval of the Credit Trading Program

The draft permit allows credit for activities implemented after September 29, 2006, which is the DEQ's adoption date of the Willamette Basin TMDL. The EPA is concerned that allowing trading for projects retroactively could allow the purchasing of credits for projects that were completed for reasons other than to generate thermal credits.

The Fact Sheet does not list existing projects eligible for credit retroactively. Based on discussion during the September 5<sup>th</sup> telephone conference, the EPA understands there are no eligible projects under consideration. The EPA understands this language is in the Permit to allow the Permittee the opportunity to begin implementing credit-generating projects prior to issuance of the permit modification.

The EPA requests that any credit-generating activities implemented prior to the permit modification be documented in the Response to Comments. In addition, the permit language must be narrowed to provide credit for only those projects implemented for the purposes of generating credits.

#### Trading Program Elements

The required elements of the City's Trading Program and approval process are vague. Additional detail must be added to the permit. If there is existing guidance upon which DEQ will review and approve the City's Credit Trading Program, the permit must either refer to that document, or provide that detail in the Permit.

#### **Specific Comments in Permit**

Page 2. *Table of Effluent Excess Thermal Load, Time Period.* The time period listed is from June 1 – September 30.

Comment: The permit modification applies the load limit for six months (June 1 through September 30), whereas the current permit applies limits year-round as specified in the TMDL. DEQ should confirm the time period during which the thermal load allocation applies.

Page 2. *Report submittals.*

Comment: The annual report should document the date each trade was initiated or became effective for credit.

Page 3. Section 9. a. *Approved Credit Trading Program and Changes. The DEQ-approved credit trading program is incorporated into this permit by reference.*

Comment: It is unclear from the permit documents what constitutes Wilsonville's "DEQ-Approved Credit Trading Program" and its current status. Further, it is not clear if DEQ is referring to its own program, as described in the Internal Management Directive (IMD), or a proposed credit trading program submitted as part of the permit modification request. The trading program is also referred to on Page 2 under Modification #1 - Table of Effluent Excess Thermal Load, i.e. "per the procedures in the approved trading program". If the DEQ-approved credit trading program exists, please refer to it by title, date of document, and approval date.

Page 3. Section 9.a.(1) *Public notice. DEQ will provide an opportunity for a 30-day public review and comment period on the proposed credit trading program or any ...*



Comment: It is unclear whether this section is referring to a change in the permittee's proposed trading program, or a change to DEQ's trading IMD. If the reference is to the permittee's proposed trading program, is this section referring to an additional public comment period other than for the permittee's trading program associated with this modification? There is no explanation regarding the process DEQ follows to approve a trading program – i.e., is DEQ using its IMD as guidance to approve the trading proposal in a permit application? Also, there is no information regarding what the permittee is required to submit for an approvable trading program.

Page 3. Section 9.a.(1) *Public notice...Significant amendments include changes in trading ratio, types of trades or trading metrics (for example, addition of an activity to a riparian shade restoration program that provides cooling or prevents heating but is not measured using a shading metric), or changes to trading parameters (for example, addition of nutrient credit trading to thermal load credit trading)*

Comment: Why is nutrient credit trading mentioned in a proposed permit modification for temperature?

Page 3. Section 9.a.(3) *Trading program elements. At a minimum, the permittee's program must include the following:*

This section is too vague to be able to determine what an approvable trading program needs to contain. As an alternative to adding the necessary detail here, the Permit could reference the applicable guidance document with the complete description of required elements for the trading program. The section must also list the amount of credits that are needed by the facility to meet its temperature limit in a specific time period.

Page 3. Section 9.b.(1).a. under General Provisions for Credit Trading. *Credits are generated from activities that do not impair beneficial uses or cause adverse ecological conditions and are not already required by statute or rule. Activities must also target areas that are in need of improvement and the permittee should focus on areas that have greater potential for overall ecological benefit whenever possible.*

Comment: The "General Provisions for Credit Trading describes what type of activities are encouraged – specifically, "areas that are not already required by statute or rule" and "areas in need of improvement." This seems to contradict two other sections of the permit and needs better explanation than is currently provided.

One contradiction is in Section 9.c.(2) Specific Provisions for Thermal Load Credits. *Start date for credit generation activities. Credits must be from activities implemented after the September 29, 2006 adoption date of the Willamette Basin TMDL.* The contradiction is that areas may have been improved since 2006 but it is not clear that they are eligible for generating credits. The EPA recommends that only new activities developed for the purposes of generating thermal credits be eligible.

The second contradiction is in the fact sheet's explanation of what is meant by "areas required by statute and rule." This is found under the heading "What are the general provisions for credit trading?" (Page 2) The example used states that "if there is a city or county requirement to protect a 50 ft buffer next to a stream, DEQ will give thermal credit for areas within that buffer that are actively planted and maintained to provide for stream shading." This does not specifically require new activity and therefore could be misinterpreted and misapplied to allow credit for planting that was done since 2006 for other purposes. Additionally, it does not refer to the specific city and



county rules or ordinances that may require landowners to do restoration within that 50 foot buffer, which would make that activity ineligible for credit. Other authorities may also apply to designation and management of the buffer, such as the city's and county's stormwater permits, and those should be acknowledged as well.

The issue of what is the applicable city or county regulation comes up again in Attachment A, where the details of a specific restoration approach are provided. The applicable regulations for determining the baseline should be referenced or provided in the document, such as in Section 3, Thermal Credit Calculation, which should include a description of the baseline from which to measure "uplift" for credit purposes.

Page 3. Section 9.b.(1).b. under General Provisions for Credit Trading. *Credits are generated prior to or during the period they are applied to the permittee's waste discharge limitations in Schedule A unless otherwise allowed by this permit or DEQ in writing.*

Comment: Credit could not be generated for compliance with a limit later than the applicable monitoring period. The phrase "unless otherwise allowed by this permit or DEQ in writing" should be removed.

Page 4. Section 9.b.(3) *Duration of credit use. The permittee may use credits for as long as the credit generation activity is monitored and functioning as described in the approved trading program, unless otherwise specified by this permit or DEQ in writing.*

Comment: The purpose of the caveat is unclear and it implies potential modification of the credit program without a permit modification therefore the EPA recommends that the phrase "or DEQ in writing" be removed.

Page 4. Section 9.c. *Specific Provisions for Thermal Load Credits. (2) Start date for credit generation activities. Credits must be from activities implemented after the September 29, 2006 adoption date of the Willamette Basin TMDL.*

Comment: The DEQ is providing credit for activities that have occurred during the last seven years. For transparency, any such activities should be identified prior to approval of the Program.

### **Specific Comments on Permit Evaluation**

Page 2. Section entitled "What are the general provisions for credit trading?" *Condition D.9.b of the proposed permit modification details general provisions for credit trading. Credit from trading programs can only be generated by actions taken in an approved area that do not impair beneficial uses or cause adverse ecological conditions and are not already required by rule. For example, if there is a city or county requirement to protect a 50 foot buffer next to a stream, DEQ will give thermal credit for areas within that buffer that are actively planted and maintained to provide for stream shading.*

Comment: In addition to the comments provided above regarding this section, the example given appears problematic because it is not clear what is required by the city or county for the 50 foot buffer. Possible revision language would be: *For example, if there is a city or county requirement to protect a 50 foot buffer next to a stream yet the city or county does not require active planting or shading of the buffer, DEQ will give thermal credit for areas within that buffer that are actively planted and maintained to provide for stream shading.*

The EPA requests that a proposed final permit modification be provided to the EPA for review prior to issuance of the final permit. Please contact me at (206) 553-1755 or by email at [lidgard.michael@epa.gov](mailto:lidgard.michael@epa.gov) if you have any questions about this letter or related matters, or you may contact Susan Poulsom, of my staff, at (206) 553-6258 or by email [poulsom.susan@epa.gov](mailto:poulsom.susan@epa.gov).

Sincerely,

A handwritten signature in blue ink that reads "Susan Poulsom for".

Michael J. Lidgard, Manager  
NPDES Permits Unit

cc: Ranei Normura, DEQ Alternative Compliance Policy Analyst  
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